

ANALYSIS OF AMENDED BILL

Author: Walters Analyst: Deborah Barrett Bill Number: AB 2786
 Related Bills: See Legislative History Telephone: 845-4301 Amended Date: April 3, 2006
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Domestic Service Wages and Withholding Reported On Employer's Tax Return

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED STILL APPLIES.

☒ OTHER – See comments below.

SUMMARY

This bill would allow employers to withhold and report domestic service employee income on the employer's tax return filed with the Franchise Tax Board.

SUMMARY OF AMENDMENTS

The April 3, 2006, amendments deleted legislative intent language to enact legislation that would conform to federal income tax laws pertaining to domestic service employees. The April 3, 2006, amendments would permit employers, in agreement with the domestic service employee, to withhold and report the income paid to a domestic service employee on the employer's income tax return. The amendments would also require the Franchise Tax Board (FTB) to revise applicable forms and schedules to accommodate the provisions of this bill.

PURPOSE OF THE BILL

According to the author's staff, the purpose of this bill is to make it easier for taxpayers to report and remit domestic service employee wage and withholding, respectively.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director

Date

John W. Davies

4/20/06

for Selvi Stanislaus

EFFECTIVE/OPERATIVE DATE

This bill would be effective as of January 1, 2007, and be operative for returns filed on or after that date.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Under current federal law, a domestic service employee is defined as an employee who performs services in the private home of the employer. Employers of domestic service employees report wages paid to the employee and withhold certain employment taxes if they pay an employee \$1,000 or more in a calendar quarter, or \$1,500 or more in a calendar year. The amount of wages and withholding of a domestic service employee can be reported:

- annually on the employer's personal income tax return,
- annually or quarterly by filing Schedule H directly, or
- annually or quarterly through a business tax return.

Quarterly wage and withholding reporting is required if the total amount paid to a single domestic service employee exceeds \$20,000 in a calendar year. The federal employment taxes withheld by an employer of a domestic service employee include Social Security and Medicare, and federal unemployment tax. Federal income tax is not required to be withheld from wages of a domestic service employee, although it may be withheld upon the request of the employee.

Under current state law, the Employment Development Department is responsible for the administration of state employment tax, including the Personal Income Tax Withholding. Under current state law, an employer of household workers must report wages when they employ one or more individuals to perform work and pays wages of \$750 or more in a calendar quarter. When an employer meets the \$750 threshold, they are responsible for the withholding and remittance of State Disability Insurance (SDI). In addition, when wages exceed \$1000 in a calendar quarter, the employer must also remit State Unemployment Insurance and Employment Training Taxes. Similar to federal requirements, state personal income tax is not required to be withheld from wages of a household worker, although it may be withheld upon the request of the employee.

Under state law, employment tax payments are required to be remitted quarterly, with a reconciliation report due annually by each employer. If a household employee earns less than \$20,000 a year, the employer may elect to report wages and withholding quarterly, but not remit payment until January of the following year.

THIS BILL

This bill would permit employers, in agreement with a domestic service employee, to withhold and report the domestic service income of a domestic service employee on the employer's income tax return.

This bill would require FTB to revise applicable forms and schedules to accommodate the provisions of this bill.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

The bill language is unclear whether the author intends the current requirement for employers of domestic service employees to report and remit wage and withholding on a quarterly basis to be replaced by a requirement to report and remit wage and withholding annually with the employer's income tax return. The author may wish to amend the bill to specify whether this reporting requirement would be in addition to the current reporting requirement or instead of.

It is unclear whether the author intends for the department to assume responsibility for the collection of taxes paid for domestic workers. It is suggested that the bill be amended to include a mechanism for providing both the funds collected by FTB and the data reported on the income tax return to EDD.

This bill is not limited to employers within the state. As a result, an out-of-state employer that employees domestic workers within California could claim those wages in another state without having a California liability. The author may wish to add language limiting the agreement to employers and domestic service workers within California.

TECHNICAL CONCERNS

This bill uses an undefined term, i.e., "domestic service employee." The absence of a definition to clarify this term could lead to disputes between the department and taxpayers. It is recommended the term be revised to "household worker" to correspond with current statutory references.

The bill refers to the reporting of domestic service employee income, while employers are actually required to report the domestic service employee wage and withholding. It is recommended the language be revised to reflect the actual employer requirement to prevent any confusion.

OTHER STATES' INFORMATION

The states reviewed include *Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws. None of the states reviewed allow domestic service employee wage or withholding to be reported on the state income tax return.

FISCAL IMPACT

Implementation of this bill would require changes to existing tax forms and electronic applications that could require the current tax return to expand to an additional page. If the forms did increase to three pages, the department would incur costs of over \$2 million for revising the forms and instructions, printing, systems changes, processing, and storage.

This bill would require the development of an additional form to be sent with the return, also impacting departmental printing, processing and storage costs. The additional costs will be identified and, if needed, an appropriation requested as the bill moves through the legislative process.

ECONOMIC IMPACT

This bill would not impact the state's income tax revenue because this bill leaves the calculation of withholding for a domestic service employee's wages unchanged.

LEGISLATIVE STAFF CONTACT

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